

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CURTIS NEIL BEITO,

Petitioner,

vs.

STATE OF WASHINGTON,

Respondent.

NO. CV-07-176-AMJ

ORDER ADOPTING REPORT AND
RECOMMENDATION, DISMISSING
PETITION AND DENYING MOTION

BEFORE THE COURT is the Report and Recommendation to dismiss Mr. Beito's *pro se* Habeas Corpus Petition pursuant to 28 U.S.C. § 2241 (Ct. Rec. 26). Petitioner is proceeding *in forma pauperis* and recently informed the court he has been released from incarceration. Consequently, his desired remedy of immediate release has been rendered moot.

In addition, because Mr. Beito was not challenging the execution of his sentence, 28 U.S.C. § 2241 was not the appropriate provision under which to proceed. Petitioner was advised, to the extent he wished to challenge the conditions of confinement, he must do so in a separate action pursuant to 42 U.S.C. § 1983, after he has exhausted available administrative remedies. See 42 U.S.C. § 1997e(a).

Finally, the magistrate judge determined under *Younger v. Harris*,

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1 401 U.S. 37, 53-54 (1971), that abstention was appropriate under the
2 circumstances of Mr. Beito's case. Petitioner filed no objections.
3 The Motion for Appointment of Counsel (Ct. Rec. 28), letter (Ct. Rec.
4 29) and three "Statements" (Ct. Recs. 30, 31 and 32) are not
5 responsive to the Report and Recommendation.

6 Accordingly, for the reasons set forth above and in the Report
7 and Recommendation, **IT IS ORDERED** the Report and Recommendation (Ct.
8 Rec. 26) is **ADOPTED in its entirety** and the Petition is **DISMISSED**
9 **without prejudice** to Mr. Beito pursuing appropriate remedies in the
10 Washington State courts. **IT IS FURTHER ORDERED** all pending motions
11 are **DENIED as moot**.

12 **IT IS SO ORDERED.** The District Court Executive is directed to
13 enter this Order, enter judgment, forward a copy to Petitioner at his
14 last known address and close the file.

15 **DATED** this 27th day of July 2007.

16 *S/ Robert H. Whaley*

17 ROBERT H. WHALEY
18 CHIEF UNITED STATES DISTRICT JUDGE
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